IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5108 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEHTA AMARCHAND TEJASIBHAI

Versus

BHACHAU AREA DEVELOPMENT AUTHORITY

Appearance:

1. Special Civil Application No. 5108 of 2003

MR CH VORA for Petitioner No. 1-3

MR MD PANDYA for Respondent No. 1

Mr SN SHELAT, ADVOCATE GENERAL, with Ms MAITHILI MEHTA, AGP, for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 03/08/2004

ORAL JUDGEMENT

RULE. Service of rule is waived by learned advocate Shri M.D. Pandya for respondent No. 1 and by learned AGP Ms. Maithili Mehta for respondents Nos. 2 and 3. At the request of the learned advocates, the petition is finally heard today.

2. The petitioners are residents of Bhachau and they have been aggrieved because, in pursuance of Town Planning Scheme No. 1 of Bhachau made under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as 'the Act'), they are being allotted Final Plot No. 462 in lieu of their Original Plots bearing Nos. 627-631, as it is not convenient to them to use the said Final Plot for commercial purpose.

3. Learned advocate Shri Vora appearing for the petitioners has submitted that the petitioners had purchased land bearing Survey Nos. 627-631, which had been given Original Plots Nos. 627-631 in pursuance of Town Planning Scheme No. 1 of Bhachau. In pursuance of the scheme, the draft town planing scheme had been published, and as per the said town planing scheme, the petitioners were to be allotted Final Plot No. 462, which was on the southern side of their original plots as shown in Annexure 'A' to the petition. The said draft town planning scheme had been sanctioned by the State of Gujarat on 22nd May, 2002, under the provisions of sec. 42(2) of the Act.

4. According to the petitioners, though it was not necessary, respondent No. 2, the Town Planning Officer, who was appointed on 27th May, 2002, made changes in the draft town planning scheme, and he published the draft preliminary scheme, wherein place of Final Plot No. 462 had been shifted and the said plot had been reconstituted at the place where the petitioners were having their original plots. Thus, the location of F.P. No. 462 as shown in the sanctioned draft town planning scheme has been changed. The petitioners were not given any notice before effecting the said change and before the said preliminary scheme had been declared on 26th December, 2002 by respondent No. 2.

5. It has been submitted by the learned advocate that on account of the change effected by the respondent authorities, the petitioners, who are businessmen and who propose to do commercial activities at the final plot which has been allotted to them, would find it very difficult to do their business because, on the reconstituted F.P. No.462, the petitioners would be

having frontage only on the astern side, whereas on the original plots, they were having frontage on three sides, which was more convenient to them for their business purposes. Even as per the sanctioned draft town planning scheme, the petitioners were having the location of F.P. No. 462 on the southern side of the original plots and the location of the said final plot was also much better for carrying out their commercial activities.

6. According to the learned advocate, it was not at all necessary to make the change in the sanctioned draft town planning scheme and the said change, which has been made without hearing the petitioners, is violative of the principles of natural justice because the petitioners were not given any notice before effecting the said change and, therefore, the impugned action of changing the location of F.P. No. 462 should be quashed and set aside.

7. In pursuance of notice issued by this court, learned advocate Shri M.D. Pandya has appeared for respondent No. 1 and, along with Shri S.N. Shelat, Advocate General, learned AGP Ms. Maithili Mehta has appeared for respondents Nos. 2 and 3.

8. It has been submitted on behalf of the respondents that the change had to be effected in public interest. It has been also submitted by them that though the petitioners were not given notice, because their names were not on the property card maintained by the government authorities, in fact, they were heard and the objections filed by them were also considered. It has been also submitted that F.P. No. 462, which was to be allotted to the petitioners as per the sanctioned draft town planning scheme, has been now reserved for a health center.

9. Substantiating the aforestated arguments in detail, it has been submitted on behalf of respondent No. 2 that ample opportunities were given to the petitioners and the petitioners had also availed those opportunities. Simply because no notice was given to the petitioners, it cannot be said that the principles of natural justice were violated by the respondent authorities. My attention has been drawn to the additional affidavit-in-reply filed on behalf of respondent No. 2 and the copies of the proceedings annexed to the said reply. Upon perusal thereof, it can be seen hat on 1st July, 2002, the petitioners had attended the office of respondent No. 2 and had stated that they had purchased the property, but the property in question was not in

their names. They had assured respondent No. 2 that relevant documents would be produced before respondent No. 2 within 7 days from 1st July, 2002 and they would also do the formalities for getting the property mutated in their names. It, however, appears that the property in question had not been mutated in name of the petitioners. In spite of the said fact, again on 28th August, 2002, the petitioners were heard by respondent No. 2. The petitioners had lodged their objections also by writing a letter dated 27th August, 2002. The said letter has been annexed to the petition at Annexure B. Thus, the petitioners had duly represented their case before respondent No. 2 and, therefore, it cannot be said that the petitioners did not get any opportunity of being heard before the change had been effected.

10. It has been further submitted that as per the draft town planning scheme, which had been sanctioned by the State of Gujarat on 22nd May, 2002, F.P. No. 462 as shown in Annexure A to the petition, was to be allotted to the petitioners. Respondent No. 2, upon assuming charge, found that the said plot was suitable for reserving for a health center because, the said plot was abutting a 9 meter wide road. Normally places like hospitals should be located near a wide road so as to see that more people can have smooth mobility on a wider road. The logic behind this is quite simple because at such a place, normally the density of traffic is more. More place is required for parking and for accommodating large number of people visiting the centre. As there was no other place, where width of road was 9 M, where a health centre could be constructed, respondent No. 2 thought it proper to reserve F.P. No. 462 for the purpose instead of allotting the same to the owners of original plots Nos. 627-631.

11. Due publicity was given to the draft preliminary scheme as it can be seen from the annexures annexed to the additional affidavit-in-reply filed by respondent No. 2. Even the owners of Original plots Nos. 627-631 were issued notices because their names were reflected in the revenue record. When the original owners had informed respondent No. 2 that they had sold the property in favour of the present petitioners, the preset petitioners were also heard by respondent No. 2. Thus, it is clear that the petitioners had availed an opportunity of representing their case before respondent No. 2.

12. In spite of the objections filed by the petitioners, respondent No. 2 came to the conclusion that it would be in the interest of public at large to

have a health center at F.P. No. 462 as declared in the draft town planning scheme and, therefore, the proposed change, which he wanted to effect in the preliminary scheme, was effected in spite of objections filed by the petitioners.

13. Upon hearing the learned advocates, and upon knowing the version of the respondent authorities, it is clear that the decision had to be changed by respondent No. 2 in the larger interest of the society. Of course, the petitioners might find it inconvenient to perform their commercial activities at Final Plot No. 462, which has been allotted to them, possibly for the reason that now they are having one frontage, whereas initially their original plots were having lanes on three different sides. In the process of town planning, very often an individual might have to suffer a little, but in view of the fact that such schemes are made for benefit of public at large, such a grievance cannot be given more importance because the authorities have to strike a balance between interest of the society at large and interest of an individual.

14. In the instant case, the authorities decided to have a health center as it was an ideal location because of having a wider road near the final plot, which was to be allotted to the petitioners. The said decision cannot be said to be arbitrary or mala fide. If respondent No. 2 effected some change so as to provide more benefits to the public at large, it cannot be said that the impugned action of making the change in the draft town planning scheme is bad or arbitrary.

15. The grievance of the petitioners that no notice was given to them before the change was effected has also no substance because, in fact, the petitioners' case had been duly considered by respondent No. 2. Even without issuance of notice, as the petitioners got information with regard to the proposed change, they had approached respondent No. 2, and respondent No. 2 had heard the petitioners and had also considered the objection filed by them. In view of this fact, it cannot be said that the respondent authorities have acted in violation of the principles of natural justice.

16. Looking to the aforestated reasons, I do not find any arbitrariness on the part of the respondent authorities and, therefore the petition is rejected. Rule is discharged with no order as to costs.

(A.R. Dave, J.)

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